No. 84-592

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NORMAN WILLIAMS AND SUSAN LEVINE,
Appellants,

v.

STATE OF VERMONT AND
WILLIAM H. CONWAY, JR., COMMISSIONER,
VERMONT DEPARTMENT OF MOTOR VEHICLES,
Appellees.

On Appeal from the Supreme Court of Vermont

APPELLEES' BRIEF

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QUESTIONS PRESENTED

1. Whether the Vermont motor vehicle purchase and use tax (Vt. Stat. Ann. tit. 32, § 8901 *et seq.*) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by its failure to afford to a new resident credit for sales tax paid on an automobile purchased, used and registered in a former state of residence.

2. Whether the Vermont motor vehicle purchase and use tax violates the Privileges and Immunities Clause of art. IV, § 2, cl. 1 of the United States Constitution by its failure to afford to a new resident credit for the sales tax paid on an automobile purchased, used and registered in a former state of residence.

3. Whether the Vermont motor vehicle purchase and use tax violates the Commerce Clause (art. I, § 8, cl. 3) of the United States Constitution by its failure to afford to a new resident credit for the sales tax paid on an automobile purchased, used and registered in a former state of residence.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the provisions cited by appellants, the following statutes are involved, the pertinent text of which are reprinted in the Appendix to this Brief:

Vt. Stat. Ann. tit. 23, § 4(30)
Vt. Stat. Ann. tit. 23, § 301
Vt. Stat. Ann. tit. 23, § 411
Vt. Stat. Ann. tit. 23, § 463
Vt. Stat. Ann. tit. 32, § 8905(a)
Vt. Stat. Ann. tit. 32, § 8905(a) (1966) (amended 1975)
Vt. Stat. Ann. tit. 32, § 8912

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STATEMENT OF THE CASE

Appellee agrees with appellants' Statement of the Case, except as follows:

Appellant—Williams was required to register his motor vehicle in Vermont when he became a resident of this state, not when his Illinois registration expired. *See* Vt. Stat. Ann. tit. 23, §§ 4(30), 301.

The Superior Court did not hold that the Vermont motor vehicle purchase and use tax discriminated on the basis of residency. Rather, it stated:

We are persuaded that 32 V.S.A. § 8911 does not afford, on its face, equal treatment to residents and nonresidents who purchase cars out-of-state. We conclude, however, that this disparity is supported by a rational purpose and is reasonably structured to advance a legitimate legislative goal.

* * * *

While the overall tax burden on the Plaintiffs may be greater than on a state resident who does not move, we are pursuaded that the difference is supported by their use of the highways of more than one state. In any event, the test for an equal protection claim is whether discrimination occurs *within* the state, regardless of whether they were purchased by residents or nonresidents, and Plaintiffs have failed to demonstrate that they would have been treated any differently had they been Vermont residents when they purchased their cars.

J.A. 14-15.

SUMMARY OF ARGUMENT

The Vermont motor vehicle purchase and use tax is a user-based levy to raise revenue for the specific purpose of improving and maintaining this state's highway system. Any person who is required to register a vehicle in Vermont before it may be operated on the highways, *i.e.*, a resident, or any person who simply elects to register it here must pay the tax as a condition precedent to registration.

Vt. Stat. Ann. tit. 32, § 8911(9) confers a pro-rata credit for taxes paid on a pleasure car to another state by a Vermont resident if that state would confer the same credit to its residents who purchase a vehicle in Vermont. This statute was intended to broaden the market in which residents could shop for their automobiles and to encourage the residents of reciprocal states to shop in Vermont. It fosters interstate commerce and serves a legitimate governmental purpose.

The credit is available in Vermont only if the purchaser *first* registers the vehicle here; if it were first registered elsewhere (on other than a temporary or in-transit basis) the owner does not receive credit, irrespective of whether he or she resided in Vermont at the time of purchase. Accordingly, Vermont treats in the same way all who first register a car in this state, and treats in the same way all who had first registered their vehicles elsewhere. The intended and logical beneficiaries of the credit are the former. Appellants, who had purchased, registered and used their vehicles in Illinois and New York before moving to Vermont, fall within the latter class.

The Vermont Supreme Court construed section 8911(9) in *pari materia* with the state's registration laws and found that the credit provision did not distinguish or discriminate on the basis of residency. Ascertaining the legislative intent of the tax and the credit, the court concluded that under the present statutory scheme appellants pay the same tax and are treated in exactly the same manner as all other taxpayers, except for those who are statutorily exempt. *Leverson v. Conway*, 144 Vt. 523, 533, 481 A.2d 1029, 1035 (1984). Hence the court specifically disagreed with appellants' contention that "Vermont residents in exactly the same circumstances . . . would have been granted a credit and would have paid *no* purchase and use tax to Vermont." Appellants' Brief at 7.

Appellants' erroneous and invalidated premise is the foundation upon which all of their constitutional challenges are made. As in *Aero Transit Co. v. Board of Railroad Commissioners of Montana*, 332 U.S. 495 (1947), the Court should

> put aside at the start appellant[s'] suggestion that the Supreme Court of [the state] has misconstrued the state statutes and therefore that [the Court] should consider them, for the purpose of [its] limited function, according to appellant[s'] view of

> their literal import. The rule is too well settled to permit of question that [the] Court not only accepts but is bound by the construction given to state statutes by the state courts.

Id. at 499-500.

Because appellants were not the victims of discrimination by Vermont, their constitutional claims are without merit. They are currently required to pay their fair and equal share for the privilege and services offered by Vermont, and making it a rule of constitutional law requiring the extension of credit would *create* discrimination: As first-time registrants in this state, they would avoid paying for benefits received, at the expense of those who are liable for the purchase tax (residents), and those residents who purchase a car in another state but who wish to use it in Vermont.

Appellants' challenge under the Commerce Clause is equally without merit. Their actions did not constitute interstate commerce. They purchased their automobiles while residents of Illinois and New York, and were obligated to comply with those states' tax and registration laws. They subsequently elected to move to Vermont and to use their cars here, and are likewise obligated to obey this state's tax and registration laws. Appellants were simply involved in two separate *intra*state events and the Commerce Clause is not implicated in this case. Even if the Commerce Clause were implicated, the tax was imposed only after appellants established Vermont residency, and after any interstate commerce had ceased. They were subject to the tax not because they traveled interstate but because they decided to register and use their cars in Vermont.

Nor is there validity in the claim that the Vermont tax scheme is "improperly designed" to encourage in-state purchases. "A state, for many purposes, is to be reckoned as a self-contained unit, which may frame its own system

of burdens and exemptions without heeding systems elsewhere." *Henneford v. Silas Mason Co.*, 300 U.S. 577, 587 (1937). Any "encouragement" to purchase in Vermont results from appellants' own decisions and from the justifiable failure of their prior states of residence to refund a portion of the sales tax they paid thereto.

Moreover, unlike the tax in *Henneford* which was a general revenue raising device, the excise imposed by Vermont is in the nature of a user fee, the proceeds of which are earmarked for specific highway purposes. Appellants have never contended, and do not contend, that the amount exacted is unreasonable with respect to what is offered by this state, and there is no reason why Vermont should be required to subsidize their move simply because they were required to pay for a privilege elsewhere. To the extent that Vermont must recognize appellants' prior travel decisions it does so by imposing the use tax on the basis of the vehicles' "book value" as of the time Vermont residency is established. Appellants paid no more, or no less than any other similarly situated Vermont taxpayer, and "equality for the purpose of competition and the flow of commerce is measured in dollars and cents, not legal abstractions." *Halliburton Oil Well Co. v. Reily*, 373 U.S. 64, 70 (1963).

ARGUMENT

I. THE VERMONT TAX SCHEME IS A VALID EXERCISE OF THE STATE'S POWER TO REQUIRE CONTRIBUTION FOR SUPPORT OF ITS HIGHWAY SYSTEM.

Sales and use taxes are different in concept, and are assessed upon different transactions:

> A sales tax is a tax upon the freedom to purchase . . . . A use tax is on the enjoyment of that which was purchased . . . . Though sales and use taxes may secure the same revenues and serve the same complementary purposes, they are . . . taxes on different transactions and for different opportunities afforded by a State.

McLeod v. J. E. Dilworth Co., 322 U.S. 327, 330-31 (1944).

The Vermont legislature has declared, Vt. Stat. Ann. tit. 32, § 8901, and the Vermont Supreme Court has found that "the purpose of the motor vehicle purchase and use tax is to pay for improvement and maintenance of the state and interstate highway systems." *Leverson v. Conway*, 144 Vt. 523, 527, 481 A.2d 1029, 1032 (1984). In addition to raising revenue for highway purposes, the use tax is designed "to protect a state's revenues by taking away the advantages to residents of traveling out of state to make untaxed purchases, and to protect local merchants from out of state competition which, because of its lower or nonexistent tax burdens, can offer lower prices." *Rowe-Genereux, Inc. v. Department of Taxes*, 138 Vt. 130, 133-34, 411 A.2d 1345, 1347 (1980).

A state has the power to require its motoring public to contribute to the support of its highway facilities. *Kane v. New Jersey*, 242 U.S. 160 (1916); *Wells v. Malloy*, 402 F. Supp. 856 (D. Vt. 1975), *affirmed without opinion*, 538 F.2d 317 (2d Cir. 1976). The incidence

of this tax is upon those who are most likely to be heavy users of Vermont's highways and facilities—those who register their vehicles in Vermont. Thus, "Vermont's basic policy is clear: Those who use the state's highways must contribute toward their maintenance and improvement." *Leverson*, 144 Vt. at 532, 481 A.2d at 1034.

Appellants contend that Vermont is constitutionally compelled to extend to them the credit provided by Vt. Stat. Ann. tit. 32, § 8911(9), which provides, that the tax shall not apply to

> pleasure cars acquired outside the state by a resident of Vermont on which a state sales or use tax has been paid by the person applying for a registration in Vermont, providing that the state or province collecting such tax would grant the same pro-rata credit for Vermont tax paid under similar circumstances. If the tax paid in another state is less than the Vermont tax the tax due shall be the difference.

Unless the classification is wholly arbitrary, the legislature certainly has the authority to grant exemptions from a tax. *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 527 (1959). The obvious objective of the section 8911(9) credit is to encourage interstate commerce. Residents desiring to purchase a pleasure car for first use in Vermont may shop in the several reciprocal states without having to consider the tax consequences. (Likewise, residents of reciprocal states can shop in Vermont assured that credit will be afforded in the home state if a tax is paid here.) Having already purchased, registered, and used their cars in other states at the time they became Vermont residents, however, there is no rational reason for extending the credit to appellants. As the court stated:

> With respect to new residents, such as [appellants] who bring their cars with them they are beyond the reach of any policy of encouragement to purchase in this state and there is no reason to exempt them

from making a fair contribution to the maintenance and improvement of Vermont's highways.

Leverson, 144 Vt. at 533, 481 A.2d at 1035.

In view of the purpose of the tax and the purpose of the section 8911(9) credit, appellants' liability should properly be compared to that of any other Vermont resident who purchases the identical car in Vermont at the same time they became residents. As an excise for the privilege of using a car in Vermont and for availing themselves of Vermont's services and facilities, no greater tax was exacted from appellants than would have been from similarly situated, long-standing Vermont residents.

II. THE VERMONT MOTOR VEHICLE PURCHASE AND USE TAX ACT DOES NOT, ON ITS FACE OR AS APPLIED, DISCRIMINATE AGAINST A NEW RESIDENT IN FAVOR OF A LONG-STANDING RESIDENT, AND DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

A. Liability for the tax is triggered by registration of the vehicle in Vermont.

The Vermont Supreme Court held that it was the act of "registration, and not the move to Vermont [which] triggered the use tax obligation." *Leverson*, 144 Vt. at 530, 481 A.2d at 1033. The tax is collected from the user "with the registration application . . . at the time of first registering or transferring a registration to such motor vehicle as a condition precedent to registration thereof." Vt. Stat. Ann. tit. 32, § 8905(b). All residents are obligated to register their vehicles if they desire to use them in this state, Vt. Stat. Ann. tit. 23, § 301, and regardless of where the owner may reside, the registration of a motor vehicle in Vermont is "conclusive evidence that the purchase and use tax applies." Vt. Stat. Ann. tit. 32, § 8903(c). Hence, liability for this tax does not arise until registration is sought. In appellants' case, liability for the tax arose six months after they accepted employ-

ment here, or otherwise became Vermont residents. Vt. Stat. Ann. tit. 32, § 8902(2). Prior to that time, appellants had the privilege of free and unlimited use of their automobiles in this state by virtue of their then current registration in Illinois and New York. Vt. Stat. Ann. tit. 23, § 411.

Section 8911(9) does not on its face discriminate on the basis of how long a person has been a resident of Vermont. Thus, the cases relied upon by appellants are readily distinguishable. *Shapiro v. Thompson*, 394 U.S. 618 (1969), and *Dunn v. Blumstein*, 409 U.S. 330 (1972), involved durational requirements that impermissibly discriminated against new residents. Similarly, in *Zobel v. Williams*, 457 U.S. 55 (1982), the amount of the benefit was directly related to how long the person had been a resident of the state. In contrast, the section 8911(9) credit is available to any person who, after establishing Vermont residency, purchases an automobile in a reciprocal state but who first registers it here. It should be emphasized that only a "resident" need register his or her car in Vermont: A person who previously had no contact with this state but who decides to register the vehicle here will, by the act of registration, be considered a resident for the purpose of the use tax.

In view of the purpose of the tax and the credit, there is no reason why Vermont should extend credit to a person who moves to the state with an automobile which had already been purchased, registered and used elsewhere. Appellants' conclusion that there is discrimination based on "residency" stems from their failure to understand the purpose and actual administration of section 8911(9).

B. The Vermont legislature did not intend to afford credit under section 8911(9) for tax paid on an automobile which had first been registered in another state.

Section 8911(9) grants a credit of the sales tax paid to a "reciprocal" state when a Vermont resident who

registers the automobile in this state pays the use tax imposed by section 8903(b). A state is "reciprocal" under section 8911(9) if it would extend credit to its own residents for any sales tax or use tax paid to Vermont.

Illinois and New York are reciprocal states. Accordingly, if a Vermont resident were to purchase a car in either of those states without registering it there, he or she would receive a pro-rata credit when the vehicle is registered in Vermont. Likewise, a resident of Illinois or New York who becomes liable for the Vermont use tax would receive credit in his or her respective home state when registration is sought therein. N.Y. Tax Law § 1118(7)(a) (McKinney 1975); Ill. Ann. Stat. ch. 120, § 439.3(d) (Smith-Hurd 1984). However, because nonresidents are exempt from the sales tax, Vt. Stat. Ann. tit. 32, §§ 8902(2), 8903(a), a resident of Illinois or New York who purchases a car in Vermont is liable for the full use tax in his or her state. Similarly, because a Vermont resident is exempt from the Illinois and New York tax, *see* N.Y. Tax Law § 1117(a)(1) (McKinney 1975); Ill. Ann. Stat. ch. 120 § 439.3(h) (Smith-Hurd 1984), he or she is liable for the full use tax in Vermont.[1]

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[1] It has been observed that "all states appear to provide that an out-of-state purchaser of an automobile may avoid the payment of a sales tax in the state of purchase by using a temporary license plate which will be valid long enough for him to return to his home state." *J.C. Penney Co. v. Hardesty*, 264 S.E.2d 604, 613 (W. Va. 1980). *See, e.g.*, Vt. Stat. Ann. tit. 23, § 463. As a practical matter, it would thus appear that the current availability of the § 8911(9) credit is more a matter of form than substance, for even if the vehicle were purchased in a reciprocal state, the Vermonter would still be liable for Vermont's 4% use tax. The impact of § 8911(9) would obviously be greater if reciprocal states were to amend their laws to include the taxation of purchases by nonresidents. Hence, this statute is designed to encourage interstate commerce now and in the future.

The instant litigation stems from the repeal in 1979 of Vt. Stat. Ann. tit. 32, § 8911(6), which exempted from the motor vehicles purchase and use tax,

> pleasure cars, the owners of which were not residents of his state at the time of purchase and had registered and used the vehicle for at least thirty days in a state or province other than Vermont.

See 1979 Vt. Acts No. 202 (Adj. Sess.) § 3, Pt. VI, eff. Sept. 1, 1980 (repealing § 8911(6)).

Prior to the repeal of section 8911(6) a nonresident who had registered and used his car for less than thirty days in another state was required to pay the full use tax; credit was not afforded by Vermont for sales tax paid to the motorist's former state of residence. Charged with the responsibility of administering the tax, Vt. Stat. Ann. tit. 32, § 8901, appellee has interpreted the repeal of section 8911(6) as further evidence of legislative intent that all "new" residents, i.e., all persons who transfer their registration from another state to Vermont—regardless of how long they may have used a car in another state—are required to pay the tax without the offsetting credit. As the Vermont Supreme Court noted, the repeal of section 8911(6) is consistent with the State's basic policy that those who use its highways must contribute toward their maintenance and improvement.

It was logical for the legislature to presume when it enacted section 8911(9) that a person who purchases a car in a state other than his own is likely to return shortly thereafter and to use it primarily in the home state. Similarly, it was logical for the legislature to presume that when a resident registers his car in another state he or she has manifested an intent to use the car there and to be subject to its jurisdiction. It should be emphasized that a person may—depending upon the par-

ticular state's definition of "residency"—be considered a resident of several states for the same purpose. The phrase "resident of Vermont" in section 8911(9) was simply intended to limit the credit to those who first register and use their cars in Vermont. As the Vermont Supreme Court recognized, section 8911(9) must be read in *pari materia* with Vt. Stat. Ann. tit. 32, § 8901 (the purpose of the tax), Vt. Stat. Ann. tit. 23, §§ 4(30), 301 (residency defined), and Vt. Stat. Ann. tit. 32, §§ 8902 (2), 8903(a), (b) (those who are liable for the tax). That phrase simply distinguishes first-time registrants from those individuals, like appellants, who become residents and who thereater register a vehicle which previously had been registered and used in another state. Indeed, the State of Vermont denies the credit to even the oldest of its residents if he or she had registered the vehicle on a permanent basis in any other state.[2]

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[2] Contrary to their claim, Appellants' Brief at 12, n.15, the appellee has asserted through all the proceedings that individuals in appellants' position would have been required to pay the Vermont motor vehicle purchase and use tax even if they were residents of Vermont when they acquired their cars out-of-state. *See, e.g.*, Appellees' Brief at 18 (Vermont Supreme Court) ("If the car were 'permanently' registered in the state where it was purchased, the Vermonter would not receive credit under 32 V.S.A. § 8911(9) for the sales tax when he or she subsequently sought to register it in this State.") Indeed, the Vermont Superior Court held that "the state exacts a use tax upon the value of all cars used *within* the state, regardless of whether they were purchased by residents or nonresidents, and plaintiffs have failed to demonstrate that they would have been treated any differently had they been Vermont residents when they purchased their cars." J.A. 15.

Appellants also quote the Vermont Supreme Court out of context. *See* Appellants' Brief at 12, n.15. The court held that it was the act of registration and not the move to Vermont which triggers the use tax obligation, and that "under the present statutory scheme, plaintiff pays the same tax and is treated in exactly the same manner as all non-exempt persons, including the resident who purchases his vehicle in a nonreciprocal state." 144 Vt. at 533, 481 A.2d at 1035.

[3] Vermont does not currently tax nonresidents on the purchase of automobiles. Vt. Stat. Ann. tit. 32, § 8903(a). It can, of course, repeal that exemption when it pleases. The decision to forego this source of revenue is not unreasonable, and is certainly within the

It is for the legislature to determine the most appropriate means, given the state's particular needs, of financing governmental services. While appellants' prior states of residence may be generous with those who elect to move to, and reside there (or perhaps those who simply desire to register their vehicles there) by affording credit for taxes paid elsewhere, *see* N.Y. Tax Law § 1118(7)(a) (McKinney 1975); Ill. Ann. Stat. ch. 120, § 439.3(d) (Smith-Hurd 1984), plainly that was not the intent of the Vermont legislature when it enacted section 8911(9). Illinois, New York, and Vermont have not agreed to surrender to each other or to any other state the tax revenue generated from purchases by its own residents.

In short, appellants cannot make out a discrimination against them by Vermont from the mere fact that they are not in a position to claim the credit. *See Storaasli v. Minnesota*, 283 U.S. 57 (1931).

C. Having purchased and registered their automobiles in their respective home states while residents thereof, appellants are not similarly situated with the intended beneficiaries of section 8911(9).

The legislature has broad authority in defining those classes of individuals, transactions, and types of property that should be exempt from a particular tax. *Madden v. Kentucky*, 309 U.S. 83, 88 (1940). A state which taxes nonresidents on the purchase of an automobile can retain that revenue. Had the Vermont legislature decided to impose a sales tax on automobiles purchased by nonresidents, this state could certainly retain the proceeds.[3]

It should be emphasized that by not registering the vehicle in the state of purchase the Vermont resident has only obtained the privilege of using the vehicle in Vermont. If the vehicle were registered where it was purchased, the owner, like appellants, would acquire the right to use it there for an indefinite period (assuming all subsequent annual fees were paid), and upon registering it in Vermont would also acquire the right to use it for an indefinite period here.

When appellants registered their cars they were treated as though they had just purchased them in Vermont. The use tax was based upon the (low) book value of a car of the same make, model and year. Vt. Stat. Ann. tit. 32, § 8907. They paid the same amount that Vermont would exact from any other resident who purchases the identical car at that time. Appellants are similarly situated with, and are treated in the same way as the long-standing resident who purchases a car out-of-state and who first registers it there. They are not similarly situated with the intended beneficiaries of section 8911(9)—those who purchase a car out-of-state but who first register it in Vermont.

D. Residents would be discriminated against if Vermont were required to afford credit for taxes paid by appellants to their former states of residence.

The State of Vermont received no compensation from appellants, Illinois, or New York when appellants, as residents of Illinois and New York, purchased and registered their cars. When appellants resided in Illinois and New York, they availed themselves of the highway facilities

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province of the legislature. *See, e.g., Olsen v. Nebraska*, 313 U.S. 236, 246 (1941). As individuals who had already purchased, used, and registered the cars in their home states before they moved to Vermont, appellants are obviously beyond the reach of any policy of encouragement either to purchase the vehicle here or in any other state, and certainly, cannot complain about the nonresident exemption from the purchase tax.

and services offered, and there was sufficient contact to establish a tax nexus. Obviously, with respect to that revenue the State of Vermont had the same legal claim or interest as that of any other state—none.

In *Kane v. New Jersey*, 242 U.S. 160 (1916), a nonresident challenged a New Jersey statute which made it an offense to operate a vehicle in that State unless it had first been registered therein. The Court stated:

> The power of a State to regulate the use of motor vehicles on its highways has been recently considered by this Court and broadly sustained. It extends to nonresidents as well as to residents. It includes the right to exact reasonable compensation for special facilities afforded as well as reasonable provsions to ensure safety.
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> * * * *
>
> [The law] contain[s] a reciprocal provision by which nonresidents whose cars are duly registered in their home State are given, for a limited period, free use of the highways in return for similar privileges granted to residents of [the other State]. Such a provision promotes the convenience of owners and prevents the relative hardship of having to pay the full registration fee for a brief use of the highways. It has become common in state legislation; . . . But it is not an essential of valid regulation. Absence of it does not involve discrimination against nonresidents, for any resident similarly situated would be subjected to the same imposition. A resident desiring to use the highways only a single day would also have to pay the full annual fee.

Id. at 167-68. *See also Hendrick v. Maryland*, 235 U.S. 610 (1915) (rejecting the contention that a similar statute discriminates against residents of the District of Columbia, attempts to regulate interstate commerce, violates the right to travel and denies equal protection).

Similarly, in *Storaasli v. Minnesota*, 283 U.S. 57 (1931), a soldier residing on a federal base in Minnesota

challenged a Minnesota statute which did not exempt him from a highway "privilege tax," although nonresidents were exempt if their vehicles had been duly registered in their home states. Rejecting an equal protection challenge and a claim that plaintiff had not been accorded a privilege extended to other nonresidents, the Court stated:

> We think it plain that the levy is an excise for the privilege of using the highways. . . . Residents of other States who desire to use the highways for more than the period specified in certain sections extending the privilege, must register their vehicles and pay the same tax as residents of Minnesota. . . . Viewed as imposing a privilege tax, the statute is alleged to discriminate against appellant in favor of residents, because it exempts vehicles licensed under it from payment of property taxes. But the exemption is a proper and lawful one, and appellant cannot make out a discrimination against him from the mere fact that he is not in a position to claim it. Doubtless in the case of every taxing act which creates exemptions there are those who cannot bring themselves within the exempt class, but this does not deprive them of the equal protection of the law.

Id. at 62.

Because they desired to use their cars in Illinois and New York, appellants were obligated to pay the sales tax and permanently register the cars. They were required to pay the tax even though they may have known at that time that they would be relocating. *See International Harvester Co. v. Department of Treasury*, 322 U.S. 340, 345 (1944). They subsequently chose to move, to become Vermont residents, and to use their cars in this State. By registering the cars in Illinois and New York appellants obtained only the privilege of use (for an indefinite period) in *those* states. That they may have used them briefly is of no moment: "One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may." *Aero Mayflower Transit Co. v. Georgia Public Service Commission*, 295 U.S. 285, 289 (1935).

The State of Vermont should not be required to extend credit for any purchase or use tax appellants paid to their prior states of residence for the privilege exercised there. *Cf. Genex/London, Inc. v. Kentucky Board of Tax Appeals*, 622 S.W.2d 499, 503 (Ky. 1981) (the Equal Protection Clause is not violated by "the denial of a credit for sales tax paid to a sister state against use tax levied on equipment first purchased and used outside Kentucky . . . when the statute grants a credit for sales tax paid to a sister state against use tax levied on equipment purchased outside Kentucky and first used in Kentucky.") To grant it would be patently unfair to earlier residents who, in effect, would be charged with the duty of subsidizing appellants' use of Vermont facilities. To be sure, if credit were extended it would result in appellants escaping all tax liability to this state.[4]

Appellants are not entitled to preferential treatment simply because they exercised the right to establish Vermont residency. *See Shapiro v. Thompson*, 394 U.S. 618 (1969); *Shaffer v. Carter*, 252 U.S. 37, 59 (1919). By virtue of the requirement that a resident pay to Vermont the difference between any tax collected by a reciprocal state and the Vermont use tax, the long-standing resident pays no less for the privilege of using the car in Vermont than does the new resident who brings along a car. It is the amount exacted for the privilege of using *Vermont* facilities—not how much an individual may have paid to a prior state of residence or the number of states in which the motorist is deemed a resident—that is in issue.

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[4] Appellant-Williams, for example, paid a sales tax of $465 to Illinois when he purchased his automobile for $9,300 in 1980. When he registered the car in Vermont its low book value was $4,300, and he paid a use tax of $172. J.A. 5-6.

As stated in *Henneford v. Silas Mason Co.*, 300 U.S. 577, 587 (1937):

> We have not meant to imply . . . that allowance of credit for other taxes paid to Washington made it mandatory that there should be a like allowance for taxes paid to other states. *A state, for many purposes, is to be reckoned as a self-contained unit, which may frame its own system of burdens and exemptions without heeding systems elsewhere.* . . . A taxing act is not invalid because its exemptions are more generous than the state would have been free to make them by exerting the full measure of her power. (Emphasis added.)

III. THE VERMONT MOTOR VEHICLE PURCHASE AND USE TAX DOES NOT VIOLATE THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE UNITED STATES CONSTITUTION.

A. Appellants were not treated differently than other persons required to pay the Vermont motor vehicle purchase and use tax. Any disparity in treatment results from actions by and within the States of Illinois and New York.

A newcomer has the unlimited privilege to use his car in Vermont, free of charge, until he either declares himself a resident, or is deemed a resident by virtue of his conduct in this state. Once residency is established the tax liability to Vermont is the same as that of any other resident, irrespective of how long the person was a resident, who at that time purchases the identical car in Vermont or in any other state.

In *Brown v. Houston*, 114 U.S. 622 (1884), a Pennsylvania resident challenged the imposition of a tax by Louisiana on coal shipped there, but which had already been taxed by Pennsylvania. The Court recognized that the Louisiana tax was not imposed by reason of the coal being brought into that state but because it had arrived at its destination and had come to its place of rest. *Id.* at 632. Rejecting a challenge under the Privileges and Immunities Clause, the Court stated:

> We are certainly unable to see how, or in what respect, any equality of privileges as citizens has been denied to the plaintiffs by the imposition of the tax. Their property was only taxed like that of all other persons, whether citizens of Louisiana or of any other state or country. Not the slightest discrimination was made.

Id. at 635.

As in *Brown*, any "disparity" results not from the denial by Vermont of a privilege or immunity but from the fact that each state "is to be reckoned as a self-contained unit, which may frame its own system of burdens and exceptions without heeding systems elsewhere." *Henneford*, 300 U.S. at 587. To accept Appellants' reasoning and to extend credit for the Illinois and New York sales tax would be to hold Vermont captive to the mercy of the Illinois and New York legislatures; it would deny to Vermont *its* authority as a sovereign state. The Privileges and Immunities Clause was designed "to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Toomer v. Witsell*, 344 U.S. 385, 395 (1948). It was not designed to deprive a state of its fundamental power to assert jurisdiction over the people therein, or to force one state to finance the travel decisions made by the residents of another.

B. The right to register a motor vehicle does not rise to a level protected by the Privileges and Immunities Clause.

The Privileges and Immunities Clause has been interpreted so that "only with respect to those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity must the state treat all citizens, resident and nonresident, alike." *Baldwin v. Fish & Game Commission of Montana*, 436 U.S. 371 (1978).

Appellants err in their contention that the interest in issue is the "right to travel." Rather, the interest in issue is simply the right to register a motor vehicle. *See Wells v. Malloy*, 402 F.Supp. 856 (D. Vt. 1975) (right to drive is not fundamental; suspension of driver's license, and refusal to register a motor vehicle are valid tax collection strategies), *affirmed without opinion*, 538 F.2d 317 (2d Cir. 1976).

In *Baldwin*, the court upheld the authority of Montana to charge a nonresident a greater fee than a resident for an elk hunting license. It stated:

> [Elk hunting] is not a means to the nonresident's livelihood. The mastery of the animal and the trophy are the ends that are sought; appellants are not totally excluded from these. The elk supply, which has been entrusted to the care of the State by the people of Montana, is finite and must be carefully tended in order to be preserved.
>
> Appellant's interest in sharing this limited resource on more equal terms with Montana residents simply does not fall within the purview of the Privileges and Immunities Clause. Equality in access to Montana elk is not basic to the maintenance or well being of the Union. Appellants do not—and cannot—contend that they are deprived of a means of a livelihood by the system or of access to any part of the state to which elk may seek to travel.

436 U.S. at 388.

Vermont's interest in maintaining and improving its highways is certainly no less important. As in *Baldwin*, appellants have not been denied "access to any part of the State to which [they] may seek to travel," and there is nothing in the pleadings establishing that these particular automobiles are an indispensable means to their livelihood.[5]

[5] Vt. Stat. Ann. tit. 32, § 8909 provides that "[i]f the tax due under subsections (a) and (b) of section 8903 of this title is not paid *as hereinbefore provided* the commissioner shall suspend such purchaser's right to operate a motor vehicle within the State of Vermont . . ." (Emphasis added.) Contrary to the legal allegation in their complaint, *see* J.A. 8, the sanction of license suspension is currently applicable if the resident uses a vehicle in Vermont which has not been registered but *should* be registered. Payment of the tax is keyed to registration. *See* Vt. Stat. Ann. tit. 32, § 8905. If a resident does not in fact use the vehicle in Vermont he or she would not be required to register it here, Vt. Stat. Ann. tit. 23, § 301, and would not have to pay the tax. *Compare* Vt. Stat. Ann. tit. 32, § 8905(a) *with* Vt. Stat. Ann. tit. 32, § 8905(a) (1966) (amended 1975). Nothing in the Vermont motor vehicle purchase and use tax precludes the owner from driving any *other* vehicle which has been properly registered.

Accordingly, the cases upon which appellants rely are inapposite. In *Austin v. New Hampshire*, 420 U.S. 656 (1975), the state clearly treated its residents more favorably than nonresidents: The former were exempt from income tax, but the latter were taxed on their income earned in New Hampshire. In *Travis v. Yale & Towne Manufacturing Co.*, 252 U.S. 60 (1920), both nonresidents and New York residents were taxed on their New York income, but the residents were permitted a "personal" deduction which decreased their tax liability.

The state is not constitutionally compelled to expend its limited resources on the construction and maintenance of highways. While appellants may have the right to own automobiles they have but a privilege of using them on the facilities constructed at taxpayer expense. The tax in this case seeks only to raise revenue to facilitate the exercise of that privilege by appellants and others. Any "disparity of treatment" results from the legal reality that as residents of Illinois and New York who desired to purchase and use their cars in those states, appellants were obligated to pay the respective sales tax.

The imposition of the Vermont motor vehicle use tax in these circumstances did not affect appellants' fundamental right to travel, and did not constitute the denial

of a privilege or immunity. If appellants have any complaint it should be addressed to the Illinois and New York legislatures, for if anything, it was the tax and registration laws of those states that affected their facileness of egress (but certainly not in any manner or degree proscribed by the Constitution). In any event, it is clear that the Vermont tax did not affect their right of ingress to this state. "Some distinctions between residents and nonresidents merely reflect the fact that this is a Nation composed of individual states, and are permitted." *Baldwin*, 436 U.S. at 383.

IV. THE VERMONT MOTOR VEHICLE PURCHASE AND USE TAX DOES NOT VIOLATE THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION.

A. The Vermont motor vehicle and use tax is neither designed to, nor does it improperly encourage in-state motor vehicle purchases.

Appellants concede that Vermont may charge users of its roads for maintenance and improvement costs and, indeed, can exact contributions by imposing a fee based on the value of the vehicle. Appellants' Brief at 29. At no time have appellants contended that the tax actually charged by Vermont is unreasonable with respect to the services or privilege provided by this State. They contend that the tax scheme somehow "provides an illegal incentive for those planning to move to Vermont to wait and purchase their motor vehicles there." Appellants' Brief at 28.

Appellants' argument disregards the fact that as former residents of Illinois and New York who *wanted* to use their automobiles in those states, they were obligated to register the cars and to pay the respective tax. Moreover, their argument ignores the purpose of the credit—to broaden the market available to *Vermont* residents by enabling them to shop in other states.

Vermont does not require an individual's presence in the state in order to register a motor vehicle. Thus, if appellants had so chosen they could have first registered their cars with Vermont after purchasing them in Illinois and New York. The difficulty, however, is that when they made their purchases they were legal residents of those states and were obligated to so register the cars if they wanted to use them. Ill. Ann. Stat. ch. 95 ½, § 3-402 (Smith-Hurd 1971); N.Y. Vehicle and Traffic Law 62A, § 401 (McKinney 1970). Thus, appellants are victims of nothing more than their own purchase and travel decisions, and the laws of their home states. *Cf. Moorman Manufacturing Co. v. Bair*, 437 U.S. 267, 277 n. 12 (1978) (no Commerce Clause violation when the alleged disparity was the consequence of the combined effect of Iowa and Illinois statutes; Iowa could not be responsible for the latter). Appellants were not the victims of any "coercive" Vermont statute.

Creating a new rule of constitutional law requiring a state to afford credit for an excise paid elsewhere would effectively result in discrimination against those residents who are liable for its sales tax, for they would be the only ones who pay for the support of the facilities enjoyed by everyone else. The consequences are evident: The states that impose a sales tax on nonresidents will get richer at the expense of the taxpayers of the state where the vehicle is actually used.

Requiring appellants to pay their fair share to Vermont can hardly be considered constitutionally proscribed "economic protectionism". Indeed, in *J.C. Penney Co. v. Hardesty*, 264 S.E.2d 604 (W. Va. 1980) the taxpayer alleged a violation of the Commerce Clause due to West Virginia's refusal to afford credit for sales tax paid on an automobile which had been purchased in New Jersey while a resident of the latter. The court stated that "this taxing scheme is neither designed to coerce West Virginia residents into purchasing automobiles in the

State of West Virginia in preference to foreign states nor does it have that effect." 264 S.E.2d at 613. Similarly, Vermont's tax scheme had no influence on appellants' decision to use their vehicles in Illinois and New York, and in no way penalized them for their decision to move to this state.

B. The Commerce Clause is not implicated.

In *J.C. Penney Co.*, a case presenting similar facts, the court stated:

> The appellee asserts that it is unfair to tax her for the entire value of her car after the State of New Jersey has levied a similar tax, but she confuses unfairness with unconstitutionality. There is no question that this duplication of tax may be, indeed, unfair but it is not unconstitutional under the Commerce Clause because the appellee is not involved in interstate commerce. She was a resident of the State of New Jersey and was taxed as such while now she is a resident of West Virginia and is taxed as such. Since appellee is not, herself, engaged in interstate commerce in her capacity as driver of a motor vehicle, *Complete Auto's* requirement of fair apportionment does not apply to her. . . . [T]here is no Commerce Clause violation because there is no interstate commerce. When appellee drove her car into West Virginia she did nothing commercial, she merely traveled.

264 S.E.2d at 613-14.

Appellants did nothing of a commercial nature. They purchased and used their cars as residents of Illinois and New York, and later decided to establish Vermont residency and to submit to this state's laws. Appellants were simply involved in two separate *intra*state events, one in Vermont, and one in their prior home states. Accordingly, the Commerce Clause is not implicated by appellants' actions.

C. Even if the Commerce Clause were implicated, the tax was imposed by Vermont in a nondiscriminatory manner and only after commerce had ceased.

Although "no state can . . . impose upon the products of other states, brought therein for . . . use . . . more onerous public burdens or taxes than it imposes upon the like products of its own territory," *Guy v. Baltimore*, 100 U.S. 434, 449 (1879), it is well settled that interstate commerce must bear its fair share of the local tax burden. *See, e.g., McGoldrick v. Berwind-White Co.*, 309 U.S. 33 (1940). Accordingly, the Court has long recognized that the Commerce Clause does not prevent a state from imposing a nondiscriminatory tax on the possession of property, *Federal Compress & Warehouse Co. v. McLean*, 291 U.S. 17 (1934), or on the use of property, *Henneford*, even though it may subsequently enter interstate commerce. Similarly, articles that have been transported interstate and which have come to rest are no longer held to be within that stream of commerce, and can be subjected to a nondiscriminatory use tax, *Halliburton Oil Well Co. v. Reily*, 373 U.S. 64 (1963), or property tax. *Brown v. Houston*, 114 U.S. 622 (1885).

The State of Vermont is not constitutionally compelled to allow appellants to use their automobiles for six months before it could demand payment of the tax, for any resident is required to pay the tax and to register the vehicle here before it could be used in this state. Vt. Stat. Ann. tit. 23, § 301. *See Storaasli*; *Kane*. Appellants became liable for the tax only after they established residency. As the court stated:

> There can be no doubt that at all relevant times herein [appellants] and [their] vehicle[s] had ceased to be in transit. [Their] intention was to move to Vermont, and at the time [they] sought to register the vehicle both [they] and the vehicle[s] had come to rest in Vermont. [Appellants' vehicles] had become 'part of the common mass of property within

> the state of destination,' [*Henneford v. Silas Mason Co.*, 300 U.S.] at 582, and was thus clearly an appropriate subject for the imposition of a nondiscriminatory use tax in Vermont. There has been no violation of the Commerce Clause.

Leverson, 144 Vt. at 535-36, 481 A.2d at 1036.

D. The Vermont tax is a user fee and need not be apportioned.

Relying upon cases that concern income, privilege, and gross receipt taxes, appellants contend that the Vermont motor vehicle tax needs to be "apportioned," [6] and that it violates the Commerce Clause because it fails to consider the amount of actual use in Vermont. As demonstrated below, there is no basis in law for that argument.

In *Henneford v. Silas Mason Co.*, 300 U.S. 577 (1937), the Court upheld a compensating use tax noting that everyone, regardless of where the article may have been purchased, received credit for sales tax paid thereon. It emphasized, however, that the decision was "not meant to imply . . . that allowance of a credit for other taxes paid . . . made it mandatory that there should be a like allowance for taxes paid to other states". 300 U.S. at 577.

Unlike the Vermont motor vehicle purchase and use tax, which is user-based and the proceeds of which are earmarked for specific highway purposes, the tax in *Henneford* was a general revenue raising device. Subsequent decisions by the Court have recognized the importance of such a distinction. As the Court has stated, a "user" fee

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[6] In the proceedings below the only challenge under the Commerce Clause was on the basis that the Vermont tax scheme creates an illegal incentive to purchase a car in this state. *See* Appellants' Brief at 32-36 (Vermont Supreme Court). At no time below have appellants raised the issue that the use tax needs to be "apportioned". Nor have appellants at any time below raised the issue that the propriety of the tax should be determined by the amount of actual use.

or "tax" "although termed a tax, cannot be tested by standards which generally determine the validity of taxes." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 622 n.12 (1981) (quoting *Interstate Transit Inc. v. Lindsey*, 283 U.S. 183, 190 (1931)). User taxes are valid so long as they "(1) do not discriminate against interstate commerce, (2) are based upon some fair approximation of use, and (3) are not shown to be excessive in relation to the cost to the government of the benefits conferred." *Massachusetts v. United States*, 435 U.S. 444, 464 (1977) (citing *Evansville-Vandenburgh Airport Authority District v. Delta Airlines, Inc.*, 405 U.S. 707, 716-720 (1972).

In *Capitol Greyhound Lines v. Brice*, 339 U.S. 542 (1950), a common carrier challenged a Maryland use tax which was based upon two percent of the fair market value of the motor vehicle. It was argued that a tax on vehicle value should be forbidden by the Commerce Clause because it varies for each carrier without relation to actual road use. The Court upheld the tax noting that it "should be judged by its result, not its formula, and must stand unless proven to be unreasonable in amount for the privilege granted." *Id.* at 545. It stated:

> Complete fairness would require that a state tax formula vary with every factor affecting appropriate compensation for road use. These factors, like those relevant in considering the constitutionality of other state taxes, are so countless that we must be content with 'rough approximation rather than precision' . . . . Each additional factor adds to administrative burdens of enforcement which fall alike on taxpayers and government. We have recognized that such burdens may be sufficient to justify states in ignoring even such a key factor as mileage, although the result may be a tax which on its face appears to bear with unequal weight upon different carriers. . . . Upon this type of reasoning rests our general rule that taxes like that of Maryland here are valid un-

less the amount is shown to be in excess of fair compensation for the privilege of using state roads."

Id. at 546-47 (Citations and footnotes omitted.)

Similarly, in *Massachusetts v. United States, supra,* the Court stated:

> Our decisions implementing these constitutional provisions have consistently recognized that the interests protected by these Clauses are not offended by revenue measures that operate only to compensate a government for benefits supplied. *See e.g., Clyde Mallory Lines v. Alabama,* 296 U.S. 261 (1935) (flat fee charged each vessel entering port upheld because charge operated to defray cost of harbor policing); *Evansville-Vandenburgh Airport Authority v. Delta Airlines, Inc.,* [*supra*]. . . . A governmental body has an obvious interest in making those who specifically benefit from its services pay the cost and, provided that the charge is structured to compensate the government for the benefit conferred, there can be no danger of the kind of interference with constitutionally valued activity that the Clauses were designed to prohibit.

435 U.S. at 462-63.

And, in *Evansville-Vandenburgh Airport Authority,* rejecting a claim that the Commerce Clause, Equal Protection Clause, and right to travel were violated by a $1 tax on enplaning commercial air passengers, the Court stated:

> We therefore regard it as settled that a charge designed only to make the user of state-provided facilities pay a reasonable fee to help defray the costs of their construction and maintenance may constitutionally be imposed on interstate and domestic users alike. The principle that burdens on the right to travel are constitutional only if shown to be necessary to promote a compelling state interest has no application in this context. *See Shapiro v. Thompson,* 394 U.S. 618 (1969). The facility provided at public expense aids rather than hinders the right to travel. A permissible charge to help defray the cost of the facility is therefore not a burden in the constitutional sense.

Id. at 714.

* * *

> [T]here is no suggestion that the Indiana and New Hampshire charges do not in fact advance the constitutionally permissible objective of having interstate commerce bear a fair share of the costs to the States of airports constructed and maintained for the purpose of aiding interstate air travel. In that circumstance, '[a]t least until Congress chooses to enact a nation-wide rule, the power will not be denied to the State[s].'

Id. at 722 (Citations omitted.)

After becoming residents, appellants decided to continue to avail themselves of the services and facilities offered by Vermont, by registering their automobiles and paying the tax. The fee they paid "is for the privilege of a use as extensive as [they] will that it shall be." *Aero Mayflower Transit Co. v. Georgia Public Service Commission,* 295 U.S. 285, 289 (1935). Neither appellant has alleged or ever claimed that the amount paid (appellant-Williams, $172; appellant-Levine, $110) exceeds fair compensation for what is provided by this state. Indeed, the Vermont Supreme Court stated:

> Since the purpose of the purchase and use tax is to pay for the maintenance and improvement of the state and interstate highway systems, 32 V.S.A. § 8901, the tax bears an obviously reasonable relationship to the services provided, namely, the privilege of using those highways.

Leverson, 144 Vt. at 531, 481 A.2d at 1034.

"[I]t is clearly within the discretion of the state to determine whether the compensation for the use of its

highways by automobiles shall be determined by way of a fee, payable annually or semi-annually . . . or otherwise." *Kane v. New Jersey*, 242 U.S. 160, 168 (1916). A one-time fee based upon the fair market value of the vehicle is reasonable compensation for the temporally unlimited privilege provided by Vermont. *See Capitol Greyhound Lines.* It should be emphasized that all the proceeds of the tax "are paid into and accounted for in the transportation fund." Vt. Stat. Ann. tit. 32, § 8912.[7]

Accordingly, the cases upon which appellants rely are inapposite; they do not concern user fees or taxes. As a user fee, the Vermont tax does not discriminate against interstate commerce, it is based upon a fair approximation of use, and certainly, it is not excessive in relation to the cost of the benefits and privileges conferred. *See Evansville-Vandenburgh Airport Authority*; *Kane.* There is, simply stated, no reason or requirement for a tax such as Vermont's to be "apportioned." [8]

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[7] For the fiscal year ending June 30, 1983, $15,753,588 was received from the motor vehicle purchase and use tax, [1983] Vt. Comm'r Finance Ann. Rep. 52; *see* Vt. Stat. Ann. tit. 32, § 182, $48,299,211 was appropriated for highway engineering and construction, 1981 Vt. Acts No. 248 (Adj. Sess.), § 277, and $30,007,514 was appropriated for highway maintenance. *Id.* § 278.

[8] The Vermont motor vehicle use tax is based upon the (low) book value of the vehicle as of the date it is registered in the state, Vt. Stat. Ann. tit. 32, § 8907, rather than its original cost. To the extent that the Commerce Clause requires a user tax to reflect the prior use of an automobile in another state, the method selected by the Vermont legislature is certainly reasonable. *See Atlantic Gulf & Pacific Co. v. Gerosa*, 16 N.Y.2d 1, 6, 209 N.E.2d 86, 88, 261 N.Y.S.2d 32, 36 (1965) (use tax based upon the value of the item when first used in the state does not violate the Commerce or Equal Protection Clauses), *appeal dismissed*, 382 U.S. 368 (1966); *Fontenot v. S.E.W. Oil Corp.*, 232 La. 1011, 95 So.2d 638, 640 (1957) (construing a use tax so that the item is valued at the time it is used in the state, in order to prevent an unjust, unreasonable, and absurd result).

CONCLUSION

Appellants' constitutional claims, "made seemingly attractive by high-sounding suggestions of inequality and unfairness," *Austin v. New Hampshire*, 420 U.S. 656, 670 (Blackmun, J., dissenting), are constructed upon the erroneous foundation that they have been the victims of discrimination by Vermont. Appellants have ignored the purpose of the tax and the credit, as well as the fundamental principle that this is a Nation of 50 sovereign states. By their actions they were subject to the jurisdiction of both Vermont and their home states, and there is no constitutional merit in their belief that having complied with the laws of one state they acquire immunity from the laws of another. To hold otherwise is to confer preferential treatment and to create discrimination.

Accordingly, the decision of the Vermont Supreme Court should be affirmed.

Respectfully submitted,

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APPENDIX

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VERMONT STATUTES

Vt. Stat. Ann. tit. 23, § 4(30):

> "Resident" shall include all legal residents of this state and in addition thereto, any person who accepts employment or engages in a trade, profession or occupation in this state for a period of at least six months. Also in addition thereto, any foreign partnership, firm, association or corporation having a place of business in this state shall be deemed to be a resident as to all vehicles owned or leased and which are garaged or maintained in this state.

Vt. Stat. Ann. tit. 23, § 301:

> Residents as defined in section 4 of this title, except as provided in section 301a of this title, shall annually register motor vehicles owned or leased for a period of more than thirty days and operated by them, unless currently registered in Vermont. A person shall not operate a motor vehicle nor draw a trailer or semi-trailer on any highway unless such vehicle is registered as provided in this chapter.

Vt. Stat. Ann. tit. 23, § 411:

> As determined by the commissioner of motor vehicles, a motor vehicle owned by a nonresident, shall be considered as registered and a nonresident operator shall be considered as licensed in this state, if the nonresident owner or operator has complied with the laws of the foreign county or state of his residence relative to the registration of motor vehicles and the granting of operators' licenses. Any exemptions provided in this section shall, however, be operative as to an owner or operator of a motor

vehicle only to the extent that under the laws of the foreign country or state of his residence like exemptions and privileges are granted to operators duly licensed and to owners of motor vehicles duly registered under the laws of this state. . . .

Vt. Stat. Ann. tit. 23, § 463:

[A]n in-transit registration permit for the purpose of movement over the highways of certain motor vehicles otherwise required to be registered when such vehicles are sold in state or province . . . shall be valid for the period of ten days from the date of issue.

Vt. Stat. Ann. tit. 32, § 8905(a):

Every purchaser of a motor vehicle subject to a tax subsection (a) of section 8903 of this title shall forward such tax form to the commissioner, together with the amount of tax due at the time of first registering or transferring a registration to such motor vehicle as a condition precedent to registration thereof.

Vt. Stat. Ann. tit. 32, § 8905(a) (1966) (amended 1975):

Every purchaser of a motor vehicle subject to a tax under subsection (a) of section 8903 of this title shall forward such tax form to the commissioner, together with the amount of tax due within 30 days of the time of first registering or transferring a registration to such motor vehicle.

Vt. Stat. Ann. tit. 32, § 8912:

The taxes collected under this chapter shall be paid into and accounted for in the transfortation fund.

NEW YORK STATUTES

N.Y. Tax Law § 1117(a)(1) (McKinney 1975):

Receipts from any sales of a motor vehicle shall not be subject to the retail sales tax imposed under subdivision (a) of section eleven hundred five, despite the taking of physical possession by the purchaser within the state, provided that the purchaser, at the time of taking delivery: (1) is a nonresident of this state.

N.Y. Tax Law § 1118(7)(a) (McKinney 1975):

The following users of property shall not be subject to the compensating use tax imposed under this article: In respect to the use of property . . . to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property . . . upon which such a sales tax or compensating use tax was paid to this state.

ILLINOIS STATUTES

Ill. Ann. Stat. ch. 120, § 439.3 (Smith-Hurd 1984):

To prevent actual or likely multistate taxation, the tax herein imposed does not aply to the use of tangible personal property in this State under the following circumstances:

* * * *

(d) the use, in this State, of tangible personal property which is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to

the sale, purchase or use of such property, to the extent of the amount of such tax properly due and paid in such other State;

* * * *

(h) the use, in this State, of a motor vehicle which was sold in this State to a nonresident, even though said motor vehicle is delivered to said nonresident in this State, if said motor vehicle is not to be titled in this State, and if a driveaway decal permit is issued to said motor vehicle as provided in section 3-603 of the Illinois Vehicle Code. The issuance of the driveaway decal permit shall be prima facie evidence that said motor vehicle will not be titled in this State.